

Zhou Huide v Yap Kim Tee & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
P-02(NCVC)(W)-797-04 OF 2016
PRASAD ABRAHAM, HASNAH HASHIM AND ASMABI MOHAMAD
JJCA
6 APRIL 2017

Trusts and Trustees — Trusts — Construction of trust deed — High Court dismissed application by sidelined temple trustee for orders to compel his co-trustees to, inter alia, provide information about, and involve his participation in, matters affecting management of temple and its trust properties — Whether High Court misinterpreted terms and purpose of declarations of trust under which the trustees were appointed — Whether application consonant with objectives and terms of declarations of trust and should have been allowed to enable sidelined trustee to carry out his duties as trustee effectively

The appellant and the respondents were appointed as trustees of a temple ('the temple') pursuant to two declarations of trust ('the declarations of trust') and held various trust properties owned by the temple in their names as trustees. The appellant was a Chinese national who resided in Singapore and occasionally visited the temple whilst the respondents were resident monks at the temple. Clause 4 of the declarations of trust provided that the temple was to be under the sole management and control of the trustees. They were also required to hold the temple's trust properties jointly and equally and to use them for such purposes as was specified under the trust deeds. Following the death of the Chief Abbot of the temple, disputes arose between the appellant and the respondents. The respondents ostracised the appellant as a co-trustee and refused to cooperate with him. They even applied to the High Court to remove the appellant as a trustee of the temple and have his name deleted from the documents of title to the trust properties. The High Court found no grounds to have the appellant removed and rejected the attempt. Despite the court's decision, the respondents refused to cooperate with the appellant, denied his requests for information regarding the temple's financial status and even sought to dispose of one of the temple's trust properties to a third party without the appellant's involvement. The continued impasse between the parties led to the appellant filing an originating summons ('OS') in the High Court seeking orders that the respondents, inter alia, hold an annual trustees' meeting, produce annual audited accounts and an inventory of the temple's assets for his inspection, bar any sale/disposal of trust properties which did not have his consent thereto, and direct the respondents to not prevent/restrict him from entering the temple. The High Court dismissed the OS although it

- A recognised that the appellant was a co-trustee of the temple and that under the declarations of trust the management of the temple was vested in the trustees. The court held that the reliefs the appellant sought for in his OS were ‘excessive, unreasonable and oppressive’; that being a foreigner and occasional visitor to the temple, it was unreasonable for the appellant to ‘dictate’ to the local trustee-residents of the temple on how the temple should be run; and that, consequently, there was no necessity for the appellant to know about the details of the assets of the temple. The court further held that cl 4 of the declarations of trust should not be interpreted to mean that the appellant’s prior written consent had to be obtained in respect of every matter that dealt with the temple’s management or its assets but that it only meant that all the trustees, collectively, should manage the temple properly for the benefit of its devotees. The instant appeal was against the High Court’s decision.

D **Held:**

- (1) The reliefs sought by the appellant in the OS were not unreasonable. The High Court had misdirected itself in finding that the appellant was a foreigner and had not visited the temple since January 2006 and therefore did not have the right to dictate how the temple should be managed. By the declarations of trust, the appellant was a co-trustee and had to be allowed access to information pertaining to the affairs of the temple in order for him to exercise his duties as trustee effectively according to the terms of the trust. The High Court had misinterpreted the terms and purpose of the declarations of trust. The reliefs/orders sought by the appellant in the OS were in tandem with the powers and obligations conferred upon the trustees of the temple as dictated by the terms of the declarations of trust (see paras 33 & 36–37).

[Bahasa Malaysia summary]

- G Perayu dan responden-respondeen telah dilantik sebagai pemegang-pemegang amanah sebuah kuil (‘kuil tersebut’) menurut dua deklarası amanah (‘deklarası amanah tersebut’) dan memegang pelbagai hartanah amanah yang dimiliki oleh kuil tersebut atas nama mereka sebagai pemegang-pemegang amanah. Perayu adalah warganegara Cina yang menetap di Singapura dan sesekali melawat kuil tersebut manakala responden-respondeen adalah sami tetap di kuil tersebut. Klausula 4 deklarası amanah tersebut memperuntukkan bahawa kuil tersebut adalah di bawah pengurusan dan kawalan pemegang-pemegang amanah tersebut shaja. Mereka juga dikehendaki memegang hartanah amanah kuil tersebut secara bersama dan saksama dan untuk menggunakannya bagi tujuan sepertimana dinyatakan di bawah waad amanah. Berikutan kematian Chief Abbot kuil tersebut pertikaian telah timbul antara perayu dan responden-respondeen. Responden-respondeen telah dihina perayu sebagai pemegang amanah bersama dan enggan bekerjasama dengannya. Malah mereka telah memohon kepada Mahkamah Tinggi untuk menyingkir perayu

sebagai pemegang amanah kuil tersebut dan memotong namanya daripada surat cara hak milik kepada hartanah amanah itu. Mahkamah Tinggi mendapati tiada alasan untuk menyingkir perayu dan menolak percubaan itu. Walaupun dengan keputusan mahkamah itu, responden-responden telah enggan bekerjasama dengan perayu, menafikan permintaannya untuk maklumat berhubung kedudukan kewangan kuil tersebut dan bahkan meminta agar menjual salah satu daripada hartanah kuil tersebut kepada pihak ketiga tanpa penglibatan perayu. Kebuntuan berterusan antara pihak-pihak itu telah membawa kepada perayu memfailkan saman pemula ('SP') di Mahkamah Tinggi memohon perintah-perintah agar responden-responden, antara lain, memegang mesyuarat pemegang amanah tahunan, mengemukakan akaun tahunan yang diaudit dan inventori aset-aset kuil tersebut untuk pemeriksaannya, menghalang apa-apa jualan/pelupusan hartanah amanah yang tidak mendapat persetujuannya, dan mengarahkan responden-responden tidak menghalang/menyekatnya daripada memasuki kuil tersebut. Mahkamah Tinggi telah menolak SP tersebut meskipun ia mengiktiraf perayu sebagai pemegangan amanah bersama kuil tersebut dan bahawa di bawah deklarasi amanah itu pengurusan kuil tersebut terletak hak pada pemegang-pemegang amanah. Mahkamah memutuskan bahawa relif-relif yang dipohon perayu dalam SPnya adalah 'excessive, unreasonable and oppressive'; bahawa menjadi orang asing dan pelawat sesekali kuil tersebut, ia tidak munasabah untuk perayu 'dictate' kepada penduduk tetap-pemegang amanah tempatan kuil tersebut tentang bagaimana kuil tersebut patut dijalankan; dan bahawa, akibatnya, tiada keperluan untuk perayu mengetahui tentang perincian aset-aset kuil tersebut. Mahkamah selanjutnya memutuskan bahawa klausa 4 deklarasi amanah tidak patut ditafsirkan untuk bererti bahawa persetujuan bertulis terdahulu kuil tersebut perlu diperoleh berkaitan setiap perkara yang berkaitan dengan pengurusan kuil tersebut atau aset-asetnya tetapi bahawa ia hanya bermaksud bahawa semua pemegang-pemegang amanah, secara kolektif, sepatutnya menguruskan kuil tersebut sewajarnya demi manfaat penganut-penganutnya. Rayuan ini adalah terhadap keputusan Mahkamah Tinggi.

Diputuskan:

- (1) Relif-relif yang dipohon oleh perayu dalam SP tersebut bukannya tidak munasabah. Mahkamah Tinggi telah salah arah dirinya dalam mendapati bahawa perayu adalah orang asing dan tidak melawat kuil tersebut sejak Januari 2006 dan oleh itu tidak mempunyai hak untuk mengarahkan bagaimana kuil tersebut patut diuruskan. Berdasarkan deklarasi amanah tersebut, perayu adalah pemegang amanah bersama dan telah dibenarkan akses kepada maklumat berkaitan urusan kuil tersebut bagi tujuan untuknya melaksanakan kewajipannya sebagai pemegang amanah secara berkesan menurut terma-terma amanah tersebut. Mahkamah Tinggi telah salah tafsir terma dan tujuan deklarasi amanah itu. Relif/perintah

A yang dipohon oleh peryau dalam SP tersebut adalah selari dengan kuasa-kuasa dan obligasi yang diberikan ke atas pemegang-pemegang amanah kuil tersebut sepertimana dinyatakan oleh terma-terma deklarasi amanah itu (lihat perenggan 33 & 36–37).]

B **Notes**

For cases on construction of trust deed, see 12(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 3576–3577.

C **Cases referred to**

Chin Sem Lin's Settlement Yong Tet Foong & Anor v Chin Thin Lee & Ors, Re [1971] 2 MLJ 152 (folld)
Yong Nyee Fan & Sons Sdn Bhd v Kim Guan & Co Sdn Bhd [1979] 1 MLJ 182; [1978] 1 LNS 244, FC (refd)

D **Legislation referred to**

Appeal from: Originating Summons No 24NCVC-271–03 of 2015 (High Court, Pulau Pinang)

E *Khoo Kay Ping (Alan Lim Wei Lun with her) (Zaid Ibrahim & Co) for the appellant.*
Goh Chek Kang (Siew Chee Wa Christina with him) (Lim Kean Siew & Co) for the respondents.

F **Hasnah Hashim JCA:**

G [1] This appeal is against the decision of the learned High Court judge made on 17 March 2016 dismissing the appellant's originating summons ('OS') dated 23 March 2015. We had, after perusing the record of appeal and hearing and considering the written and oral submissions of learned counsels for the parties unanimously allowed the appeal with no order as to costs. The High Court orders are set aside. Deposit to be refunded. These are our reasons in full.

H **THE APPELLANT'S ORIGINATING SUMMONS (OS)**

[2] In the OS the appellant had applied for the following orders, inter alia:

- I
- (a) the respondents to hold an annual trustees' meeting of the Beow Hiang Lim Temple ('the temple');
 - (b) the production of annual audited accounts and an inventory of the temple's assets for the appellant's inspection;
 - (c) the trust properties shall not be sold/disposed of by the respondents pending the registration of the appellant's name as joint trustee thereof;

- (d) that the respondents give their full cooperation and/or take appropriate steps to procure the registration of the appellant's name as joint trustee of the trust properties; A
 - (e) that the respondents shall obtain the written consent of the appellant to sell and/or dispose of the trust properties and that all transactions without the prior written consent of the appellant shall be declared null and void; B
 - (f) the respondents would not prevent or restrict the appellant from entering the temple. C
- [3] The trust properties are as follows:
- (i) All those two (2) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 49375 and 49376 and known as Lot Nos 212 and 213 respectively, Sec 3, Town of Ayer Itam together with premises No 503, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon; D
 - (ii) All those of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No HS (D) 6667 and known as No PT 1261, Sec 3, Town of Ayer Itam together with premises No 505-A, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon; E
 - (iii) All those four (4) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 31574, 31576, 31633 & 31644 and known as Lot Nos 228, 232, 1209 and 1258 respectively, Sec 3, Town of Ayer Itam together with premises Nos 520, 521, 508 and 509, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon; F
 - (iv) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 60709 known as Lot No 1378, Sec 3, Town of Ayer Itam together with premises No 129, York Road 10450, Penang erected thereon; G
 - (v) All those two (2) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 19709 and 487111 and known as Lot Nos 1476 and 1477 respectively (now both lots relined and known as Lot No 2261 comprised in Geran (First Grade) No Pendaftaran 90521), Sec 4 Town of George Town, together with premises No 5, Concordia Road, 10250 Penang erected thereon; H
 - (vi) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 31575 and known as Lot No 229 Sec 3, Town of Ayer Itam; I
 - (vii) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No HS (D)

- A** 6668 and known as No PT 1262, Sec 3, Town of Ayer Itam together with premises No 505-C, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;
- B** (viii) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No HS (D) 6669 and known as No PT 1266 and 1267 respectively, Sec 3, Town of Ayer Itam together with premises No 505-D, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;
- C** (ix) All those two (2) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No HS (D) 6672 and 6673 and known as PT Nos 1266 and 1267 respectively Sec 3, Town of Ayer Itam, together with premises No 505-G, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;
- D** (x) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 30959 and known as Lot No 1562 Sec 3, Town of Ayer Itam together with premises No 501-H, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon; and
- E** (xi) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No Pendaftaran 30960 and known as Lot No 1563 Sec 3, Town of Ayer Itam together with premises No 501-G, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon.

F MATERIAL FACTS

G [4] The facts and the issues relating to this appeal are uncomplicated. The appellant and the respondents are co-trustees of the temple. The appellant is a Chinese national residing in Singapore whilst both the respondents are resident monks at the temple. By a declaration of trust dated 10 September 2002 and 24 August 2004 ('declarations of trust') they were appointed as co-trustees by Master Kong Euee who was the chief abbott of the temple. Initially the 18 trust properties owned by the temple were registered under the name of Master Kong Euee. However, due to his old age Master Kong Euee decided to appoint additional trustees. He appointed the appellant and the respondents as co-trustees. Master Kong Euee passed away on 23 January 2006, leaving the appellant and both respondents as the remaining co-trustees.

I [5] Under both declarations of trust, the appellant and both respondents were entrusted to hold the trust properties as joint and equal trustees. It is stipulated in the said declarations of trust that the temple shall be under the sole management and control of the trustees and shall be used and maintained as the co-trustees shall direct:

4. Subject to the provision of these presents the Temple shall be under the sole management and control of the Trustees and shall be maintained as they shall direct. **A**
- [6] In respect of the trust properties it is stipulated as follows:
NOW THESE PRESENTS WITNESSETH that we the said KONG EUEE, YAP KIM TEE, LEE MUN PEE and ZHOU HUIDE (hereinafter referred to as 'the Trustees') do hereby declare that we stand seised and possessed of the aforesaid of the aforesaid land and premises upon trusts and with and subject to the powers and provisions hereinafter contained. **B**
- [7] By the terms of the declarations of trust it is clear that the trust properties were purchased for the benefit of the temple and to be used for the purpose of the temple in the manner as provided under the said trust: **C**
- (a) ancestral worship and religious rites; **D**
 - (b) sacrificial offerings;
 - (c) studying, preaching, teaching;
 - (d) meetings in connection with the temple; or **E**
 - (e) any other purposes calculated or in the opinion of the trustees to improve or benefit the moral, social or intellectual condition of the adherents of the temple.
- [8] Prior to 2002 the trust properties were registered in the name of just one person, that is, Master Kong Euee. However, after the appointment of additional trustees on 10 September 2002, five of the trust properties were transferred to Master Kong Euee, the respondents and the appellant as co-trustees. **F**
- [9] After the demise of Master Kong Euee a dispute arose between the appellant and the respondents. The respondents rejected the appellant's status as one of the co-trustees and refused to cooperate with the appellant in carrying out his duty. **G**
- [10] It is alleged that the appellant refused to take the necessary steps to apply for the sanction of the court to complete the sale of Lot 2025 to a third party. Since the appellant is a foreigner the prior consent of the Penang State Authority and Foreign Investment Committee ('FIC') was necessary before any registration. The respondents further alleged that since no consent was obtained before the transfer of the trust properties the registration of the appellant as a co-trustee is void. **H**
- I**

- A** [11] The respondents subsequently filed an Originating Summons No 24–1957 of 2006 ('OS 1957') on 11 March 2007 against the appellant to apply for, *inter alia*:
- B** (a) the removal of the name of the appellant as a trustee of the temple in the documents of title of the trust properties; and
- (b) the removal of the appellant as a trustee of the temple.
- C** [12] On 18 July 2013 the learned judicial commissioner after having heard the arguments and considered the documentary evidence before him found no grounds to remove the appellant as trustee of the temple. The High Court further ordered that the parties are at liberty to do whatever is necessary to regularise the position of the defendant (the appellant in this appeal) as a co-trustee to be properly named in the title deeds after obtaining the necessary
- D** approvals of the state authority.
- E** [13] However, despite the order of the High Court in OS 1957 the respondents blatantly refused to comply with the High Court order and further denied the appellant's request for information regarding the temple's financial status. Consequently, steps were taken to expunge the appellant's name from the document of titles and Lot 2025 was sold and transferred to third party.
- F** [14] The respondents failed to respond to the appellant's requests through his solicitor's letters:
- (a) to hold a annual trustees' meeting;
- (b) to produce of the temple's accounts and inventory list; and
- G** (c) that the trust properties cannot be disposed pending the re-registration of the appellant as a co-trustee on the documents of title.
- H** [15] The appellant through his counsel issued a letter dated 10 April 2014 to the respondents and enquired if the respondents have any objection to the appellant's applications to re-register his name as a co-trustee on the documents of title of the trust properties. By a letter dated 15 May 2014 the respondents notified that they would not agree to the appellant's intended application.
- I** [16] The appellant initiated the action in the High Court in his capacity as a trustee of the temple to protect and safeguard the interest of the temple.
- [17] After hearing arguments from both parties the learned High Court judge on 17 March 2016 dismissed the appellant's OS with cost of RM4,000. Hence this appeal.

FINDINGS OF THE HIGH COURT

A

[18] The learned High Court judge concluded, *inter alia*, in her grounds of judgment as follows:

- (a) that by the declarations of trust the appellant is a co-trustee of the temple;
- (b) cl 4 of the declaration of trust stipulates that the management of the temple vested in the trustees and only extend to the trust properties under the said trust; and
- (c) the appellant is just a visitor and therefore there is no necessity for him to know the details of the assets of the temple.

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THE APPELLANT'S SUBMISSION

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[19] Before us learned counsel for the appellant submitted that as a co-trustee the appellant has the obligation and responsibility under the declaration of trust to ensure that the affairs of the temple are managed properly. In order for the appellant to exercise his duties as co-trustee effectively as envisaged by the declaration of trust the appellant would require access to the accounts and inventory of the temple to ensure that the temple's fund is utilised properly for the benefit of the temple and its devotees. The appellant sought for an order that the an annual meeting of the trustees be held to discuss matters relating to the affairs of the temple and to make any joint decision for the interest of the temple. The disposal of the trust properties must be with the joint consent of the co-trustees. The orders sought by the appellant are in tandem with the powers and obligations of the trustees under the declaration of trust.

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[20] Learned counsel further argued that the uncooperative conduct of the respondents is in clear disregard of the 2006 court order as well as the declaration of trust. The reliefs sought by the appellant as per the OS are for the benefit of the temple. It is impossible for the appellant to manage the temple effectively without having access to the accounts and inventory of the temple. In order for the appellant to raise queries there must be an annual trustees' meeting. The learned High Court judge erred when she held that the appellant is a mere visitor and therefore there is no necessity for him to have any knowledge of the assets of the temple.

H

I

[21] The 2006 order confirmed that the appellant is the co-trustee of the temple. Thus, it is submitted that the issue regarding the position of the appellant as a co-trustee is *res judicata* as it was raised and decided by the 2006 court order.

A THE RESPONDENTS' SUBMISSION

B [22] Learned counsel for the respondents argued that the words 'the Temple' referred in the declaration of trust and in the appellant's OS and affidavits in support is different. Under the declaration of trust, the words 'the Temple' refers to the physical building erected on the trust lands. The words 'the Temple' in the OS refers to the religious institution called Beow Hiang Lim Temple which carries out its activities in the buildings erected on the trust lands. The declarations of trust confined the trust to trust properties identified and the building erected thereon.

C [23] After Master Kong Euee's demise the administration, supervision and management of the affairs of the temple was assumed by a 'Tang Jia' (supervisor). It is argued by learned counsel for the respondents that the appellant and the respondents were not appointed as trustees of the temple and therefore the appellant has no right to attend the trustee meetings, to have access to the accounts and to take part in the administration of the temple.

D [24] The appellant is just a volunteer under the said declarations of trust. It is the submission of the respondent counsel that a volunteer is a beneficiary who possess no valuable consideration for the creation of a trust. Thus, it is submitted the general principle of equity will not apply to this appeal where the appellant seeks to enforce the declaration of trust.

E OUR DECISION

F [25] Although the appellant had raised several grounds in the memorandum of appeal during the course of arguments before us, learned counsel for the appellant focused his submissions on the following grounds:

- G** (a) that the appellant is not a mere visitor to the temple but is an appointed co-trustees of the temple together with the respondents under the declaration of trust; and
- H** (b) as a co-trustee of the temple he is entitled to the information to carry out his duty and obligations under the declaration of trust.

I [26] The entire basis of the appellant's case is premised on the two declarations of trust. Under the first declaration of trust dated 10 September 2002 the trust properties as described were transferred to the co-trustees in trust. It is expressly provided that the aforesaid properties are held in trust for the temple. All the buildings situated on or to be built on the trust properties are to be used for the purpose of the temple.

[27] The trust properties were purchased utilising the funds donated by the devotees of the temple and were registered under the name of Master Kong Euee as the sole trustee. The respondents are residents monks at the temple whilst the appellant, a Chinese national residing in Singapore. On 10 September 2002 five of the trust properties were transferred to Master Kong Euee, the appellant and the respondents as the trustees. At the same time a declaration of trust was executed by Kong, the appellant and the respondents declaring that the five trust properties are held in trust for the temple. The balance of the six trust properties was transferred to Kong, the appellant and the respondents as the trustees on 24 August 2004. A declaration of trust was executed dated 24 August 2004 declaring that seven of the trust properties are held in trust for the temple.

A

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[28] Clause 4 of the declaration of trust dated 10 September 2009 clearly stipulates that:

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... the Temple shall be under the sole management and control of the Trustees and shall be used and maintained as directed.

[29] The declaration of trust dated 24 August 2004 contained similar terms reiterating that the 'Temple shall be under the sole management and control of the Trustees and shall be used and maintained as they shall direct ...'.

E

[30] The learned High Court judge in OS 1957 found no proper grounds for the removal of the appellant as trustee and confirmed that the appellant remains as the co-trustee of the temple. The High Court ordered the parties to regularise the position of the appellant as co-trustee and to be properly named in the title deeds after obtaining the necessary approvals from the state authority. In the instant appeal before us the learned High Court judge agreed with the High Court judge in OS 1957 that the appellant is a co-trustee of the temple:

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Saya bersetuju dengan hujahan plaintiff bahawa plaintiff kekal sebagai pemegang amanah Rumah Berhala berasaskan bukti berikut:

- (a) Pengisytiharan Amanah (Declarations of Trust), eksibit 'ZHD-1' jelas menyatakan bahawa plaintiff adalah pemegang amanah Rumah Berhala; dan
- (b) Pesuruhjaya Kehakiman, S Nantha Balan, dalam penghakiman beliau telah memutuskan bahawa plaintiff kekal sebagai pemegang amanah Rumah Berhala.

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[31] However, in her grounds of judgment she said:

3. Masalahnya dengan permohonan plaintiff ini ialah relif-relif yang dipohonnya adalah terlalu banyak. Seolah-olah beliau adalah orang yang berkuasa bagi Rumah Berhala tersebut. Contohnya, plaintiff mengatakan defenden-defenden tidak boleh

- A menjual hartanah-hartanah Rumah Berhala tanpa mendapatkan persetujuan bertulis daripada beliau terlebih dahulu. Plaintiff juga mengatakan transaksi penjualan hartanah yang tidak mempunyai persetujuan bertulis daripada beliau harus diisytiharkan tidak sah dan terbatal. Saya mendapati, kecuali bagi prayer (11) permohonan plaintiff dalam prayer (1) hingga (13) di lampiran 1 adalah keterlaluan,
- B melampau, tidak menasabah dan bersifat opresif. Plaintiff bukan penyumbang dana bagi Rumah Berhala itu. Jika plaintiff hanya lah pelawat yang berhasrat untuk mengunjungi Rumah Berhala, apa keperlaun beliau untuk mengetahui aset-aset Rumah berhala termasuk barang-barang antik dan lukisan-lukisan untuk beliau periksa.
- C [32] The learned High Court judge was of the considered view that cl 4 of the declarations of trust does not confer the appellant with any powers that his written consent is required with regards to the management and affairs of the trust properties:
- D ‘Pernyataan ...’ the Temple shall be under the sole management and control of the trustees and shall be used and maintained as they shall direct’ bukanlah lesen yang memberi kuasa kepada plaintiff bahawa semua urusan berkaitan hartanah Rumah Berhala dan pengurusan Rumah Berhala itu sendiri harus mendapatkan persetujuan bertulis daripada plaintiff terlebih dahulu. Sebaliknya, klausa 4 Pengisytiharan Amanah itu mengkehendaki Rumah Berhala itu diuruskan oleh
- E kesemua pemegang amanah bagi faedah penganut Rumah Berhala itu.
- F [33] With respect to the learned judge, she appears to have misinterpreted the terms and purpose of the declarations of trust. We agree with the appellant’s learned counsel when he submitted that the reliefs/orders sought by the appellant are in fact in tandem with the powers and obligations conferred upon the trustees of the temple as dictated by the terms of the declarations of trust. We would adopt the approach of Chang Ming Tat J (as he then was) in *Re Chin Sem Lin’s Settlement Yong Tet Foong & Anor v Chin Thin Lee & Ors* [1971] 2
- G MLJ 152 in the construction and the declarations of trust at p 154 para E and we quote:
- H On the whole, I rather prefer the construction that puts a meaning to the word ‘said’ in cl 13 to one that would treat it as surplus age. It is more in accord with the ordinary principles of construction and with the following dicta in the speech of Lord Selborne LC in *Pearks v Moseley* (1879–1880) 5 App Cas 714 at p 719:
- I The rule which has always been applied to cases of remoteness into the construction of the instrument, by which you investigate the expressed intention of the testator. You take his words and endeavour to arrive at their meaning, exactly in the same manner as if there had been no such law, and as if the whole intention expressed by the words could lawfully take effect. I do not mean, that, in dealing with words which are obscure and ambiguous, weight, even in a question of remoteness, may not sometimes be given to the consideration that it is better to effectuate than to destroy the intention: but I do say, that, if the construction of the words is one about which a court would have no doubt,

though there was not law of remoteness, that construction cannot be altered or wrested to something different, for the purpose of escaping from the consequences of the law.

A

and at p 722:

That question has always been investigated by looking to the state of things as it was at the testator's death.

B

[34] Hashim Yeop Sani FJ (delivering the, judgment of the court) in the case of *Yong Nyee Fan & Sons Sdn Bhd v Kim Guan & Co Sdn Bhd* [1979] 1 MLJ 182; [1978] 1 LNS 244 said:

C

It has been found difficult to give a satisfactory definition of a trust but it has been accepted that the most satisfactory definition is by Professor Keeton which definition is that a trust is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.

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[35] The words used in the declarations of trust are clear, certain and unequivocal. The terms of the trust are not limited to the trust properties but also the management of the temple:

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- (a) the trust properties as identified and described are transferred to the trustees named;
- (b) the trustees are empowered to deal and managed the trust properties according to the terms of the declarations of trust;
- (c) the trustees shall permit the temple to use for the purposes as described under the said trust and for any other purposes in the opinion of the trustees improve or benefit the moral, social or intellectual condition of the temple; and
- (d) subject to the provisions of the trust the temple shall be under the sole management and control of the trustees and shall be used and maintained as the trustees shall direct.

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[36] We of the considered view that the reliefs sought by the appellant in the OS are not unreasonable. The learned High Court judge had misdirected herself in finding that the appellant is a foreigner and have not visited the temple since January 2006. He, therefore, does not have the right to dictate how the temple should be managed:

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- A** 5. Adalah tidak munasabah sama sekali bagi seorang warganegara asing yang tidak berada di negara ini, yang bukannya pelawat Rumah Berhala itu sejak Januari 2006, untuk 'dictate' kepada warganegara ini terma-terma bagaimana sebuah Rumah Berhala patut diuruskan.
- B** [37] By the declarations of trust the appellant is the co-trustee and must be allowed access to information pertaining to the affairs of the temple in order for him to exercise his duties effectively as a co-trustee according to the terms of the trust.
- C** CONCLUSION
- D** [38] Having considered the submissions by both learned counsel as well as the materials before us and for the reasons as stated above, we unanimously allowed the appeal with no order as to costs. We ordered that the deposit be refunded. We also ordered the High Court orders to be set aside and granted the following orders:
- E** (a) the appellant and respondents as joint trustee for the temple will hold a trustees' meeting once a year and that the first trustees meeting will be held within one from the date of the order hereof;
- F** (b) the annual audited accounts the temple will be shown to the appellant for inspection one month before the annual trustees' meeting;
- (c) the temple's annual audited accounts will be discussed at all the annual trustees' meeting;
- G** (d) the annual audited accounts of the temple for the years after the demise of Master Kong Euee on 23 January 2006, that is from 2006–2014, will be shown to the appellant for inspection within two weeks from the date of this order;
- (e) that the inventory of temple's assets, including antiques and paintings, will be produced by the respondents for the appellant's inspection within two weeks from the date of the order; and
- H** (f) the respondents shall obtain the written consent of the appellant to sell and/or dispose of the trust properties and that all transactions without the prior written consent of the appellant shall be declared null and void. The appellant to take all the necessary steps to file all the relevant applications from the relevant authorities within one month from the
- I** date of this order.

Order accordingly.

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Reported by Ashok Kumar

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